



General Assembly

February Session, 2010

Raised Bill No. 5155

LCO No. 683

00683_____PS_

Referred to Committee on Public Safety and Security

Introduced by:
(PS)

***AN ACT CONCERNING THE TIMING OF TESTING FOR BLOOD
ALCOHOL LEVELS IN OPERATING UNDER THE INFLUENCE CASES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 14-227a of the 2010 supplement
2 to the general statutes is repealed and the following is substituted in
3 lieu thereof (*Effective October 1, 2010*):

4 (b) Except as provided in subsection (c) of this section, in any
5 criminal prosecution for violation of subsection (a) of this section,
6 evidence respecting the amount of alcohol or drug in the defendant's
7 blood or urine at the time of the alleged offense, as shown by a
8 chemical analysis of the defendant's breath, blood or urine shall be
9 admissible and competent provided: (1) The defendant was afforded a
10 reasonable opportunity to telephone an attorney prior to the
11 performance of the test and consented to the taking of the test upon
12 which such analysis is made; (2) a true copy of the report of the test
13 result was mailed to or personally delivered to the defendant within
14 twenty-four hours or by the end of the next regular business day, after
15 such result was known, whichever is later; (3) the test was performed
16 by or at the direction of a police officer according to methods and with
17 equipment approved by the Department of Public Safety and was

18 performed in accordance with the regulations adopted under
 19 subsection (d) of this section; (4) the device used for such test was
 20 checked for accuracy in accordance with the regulations adopted
 21 under subsection (d) of this section; (5) an additional chemical test of
 22 the same type was performed at least ten minutes after the initial test
 23 was performed or, if requested by the police officer for reasonable
 24 cause, an additional chemical test of a different type was performed to
 25 detect the presence of a drug or drugs other than or in addition to
 26 alcohol, provided the results of the initial test shall not be inadmissible
 27 under this subsection if reasonable efforts were made to have such
 28 additional test performed in accordance with the conditions set forth in
 29 this subsection and such additional test was not performed or was not
 30 performed within a reasonable time, or the results of such additional
 31 test are not admissible for failure to meet a condition set forth in this
 32 subsection; and (6) evidence is presented that the test was commenced
 33 within two hours of operation or, if the test was not commenced
 34 within two hours of operation, expert testimony is provided to
 35 establish the reliability of the tests. In any prosecution under this
 36 section it shall be a rebuttable presumption that the results of such
 37 chemical analysis establish the ratio of alcohol in the blood of the
 38 defendant at the time of the alleged offense, except that if the results of
 39 the additional test indicate that the ratio of alcohol in the blood of such
 40 defendant is ten-hundredths of one per cent or less of alcohol, by
 41 weight, and is higher than the results of the first test, evidence shall be
 42 presented that demonstrates that the test results and the analysis
 43 thereof accurately indicate the blood alcohol content at the time of the
 44 alleged offense.

45 Sec. 2. Section 14-227b of the 2010 supplement to the general statutes
 46 is repealed and the following is substituted in lieu thereof (*Effective*
 47 *October 1, 2010*):

48 (a) Any person who operates a motor vehicle in this state shall be
 49 deemed to have given such person's consent to a chemical analysis of
 50 such person's blood, breath or urine and, if such person is a minor,

51 such person's parent or parents or guardian shall also be deemed to
52 have given their consent.

53 (b) If any such person, having been placed under arrest for
54 operating a motor vehicle while under the influence of intoxicating
55 liquor or any drug or both, and thereafter, after being apprised of such
56 person's constitutional rights, having been requested to submit to a
57 blood, breath or urine test at the option of the police officer, having
58 been afforded a reasonable opportunity to telephone an attorney prior
59 to the performance of such test and having been informed that such
60 person's license or nonresident operating privilege may be suspended
61 in accordance with the provisions of this section if such person refuses
62 to submit to such test, or if such person submits to such test and the
63 results of such test indicate that such person has an elevated blood
64 alcohol content, and that evidence of any such refusal shall be
65 admissible in accordance with subsection (e) of section 14-227a and
66 may be used against such person in any criminal prosecution, refuses
67 to submit to the designated test, the test shall not be given; provided, if
68 the person refuses or is unable to submit to a blood test, the police
69 officer shall designate the breath or urine test as the test to be taken.
70 The police officer shall make a notation upon the records of the police
71 department that such officer informed the person that such person's
72 license or nonresident operating privilege may be suspended if such
73 person refused to submit to such test or if such person submitted to
74 such test and the results of such test indicated that such person had an
75 elevated blood alcohol content.

76 (c) If the person arrested refuses to submit to such test or analysis or
77 submits to such test or analysis [, commenced within two hours of the
78 time of operation,] and the results of such test or analysis indicate that
79 such person has an elevated blood alcohol content, the police officer,
80 acting on behalf of the Commissioner of Motor Vehicles, shall
81 immediately revoke and take possession of the motor vehicle
82 operator's license or, if such person is a nonresident, suspend the
83 nonresident operating privilege of such person, for a twenty-four-hour

84 period. The police officer shall prepare a report of the incident and
85 shall mail or otherwise transmit in accordance with this subsection the
86 report and a copy of the results of any chemical test or analysis to the
87 Department of Motor Vehicles within three business days. The report
88 shall contain such information as prescribed by the Commissioner of
89 Motor Vehicles and shall be subscribed and sworn to under penalty of
90 false statement as provided in section 53a-157b by the arresting officer.
91 If the person arrested refused to submit to such test or analysis, the
92 report shall be endorsed by a third person who witnessed such refusal.
93 The report shall set forth the grounds for the officer's belief that there
94 was probable cause to arrest such person for a violation of subsection
95 (a) of section 14-227a and shall state that such person had refused to
96 submit to such test or analysis when requested by such police officer to
97 do so or that such person submitted to such test or analysis,
98 [commenced within two hours of the time of operation,] and the
99 results of such test or analysis indicated that such person had an
100 elevated blood alcohol content. The Commissioner of Motor Vehicles
101 may accept a police report under this subsection that is prepared and
102 transmitted as an electronic record, including electronic signature or
103 signatures, subject to such security procedures as the commissioner
104 may specify and in accordance with the provisions of sections 1-266 to
105 1-286, inclusive. In any hearing conducted pursuant to the provisions
106 of subsection (g) of this section, it shall not be a ground for objection to
107 the admissibility of a police report that it is an electronic record
108 prepared by electronic means.

109 (d) If the person arrested submits to a blood or urine test at the
110 request of the police officer, and the specimen requires laboratory
111 analysis in order to obtain the test results, the police officer shall not
112 take possession of the motor vehicle operator's license of such person
113 or, except as provided in this subsection, follow the procedures
114 subsequent to taking possession of the operator's license as set forth in
115 subsection (c) of this section. If the test results indicate that such
116 person has an elevated blood alcohol content, the police officer,
117 immediately upon receipt of the test results, shall notify the

118 Commissioner of Motor Vehicles and submit to the commissioner the
119 written report required pursuant to subsection (c) of this section.

120 (e) (1) Except as provided in subdivision (2) of this subsection, upon
121 receipt of such report, the Commissioner of Motor Vehicles may
122 suspend any operator's license or nonresident operating privilege of
123 such person effective as of a date certain, which date shall be not later
124 than thirty days after the date such person received notice of such
125 person's arrest by the police officer. Any person whose operator's
126 license or nonresident operating privilege has been suspended in
127 accordance with this subdivision shall automatically be entitled to a
128 hearing before the commissioner to be held in accordance with the
129 provisions of chapter 54 and prior to the effective date of the
130 suspension. The commissioner shall send a suspension notice to such
131 person informing such person that such person's operator's license or
132 nonresident operating privilege is suspended as of a date certain and
133 that such person is entitled to a hearing prior to the effective date of
134 the suspension and may schedule such hearing by contacting the
135 Department of Motor Vehicles not later than seven days after the date
136 of mailing of such suspension notice.

137 (2) If the person arrested (A) is involved in an accident resulting in a
138 fatality, or (B) has previously had such person's operator's license or
139 nonresident operating privilege suspended under the provisions of
140 section 14-227a, as amended by this act, during the ten-year period
141 preceding the present arrest, upon receipt of such report, the
142 Commissioner of Motor Vehicles may suspend any operator's license
143 or nonresident operating privilege of such person effective as of the
144 date specified in a notice of such suspension to such person. Any
145 person whose operator's license or nonresident operating privilege has
146 been suspended in accordance with this subdivision shall
147 automatically be entitled to a hearing before the commissioner, to be
148 held in accordance with the provisions of chapter 54. The
149 commissioner shall send a suspension notice to such person informing
150 such person that such person's operator's license or nonresident

151 operating privilege is suspended as of the date specified in such
152 suspension notice, and that such person is entitled to a hearing and
153 may schedule such hearing by contacting the Department of Motor
154 Vehicles not later than seven days after the date of mailing of such
155 suspension notice. Any suspension issued under this subdivision shall
156 remain in effect until such suspension is affirmed or such operator's
157 license or nonresident operating privilege is reinstated in accordance
158 with subsections (f) and (h) of this section.

159 (f) If such person does not contact the department to schedule a
160 hearing, the commissioner shall affirm the suspension contained in the
161 suspension notice for the appropriate period specified in subsection (i)
162 or (j) of this section.

163 (g) If such person contacts the department to schedule a hearing, the
164 department shall assign a date, time and place for the hearing, which
165 date shall be prior to the effective date of the suspension, except that,
166 with respect to a person whose operator's license or nonresident
167 operating privilege is suspended in accordance with subdivision (2) of
168 subsection (e) of this section, such hearing shall be scheduled not later
169 than thirty days after such person contacts the department. At the
170 request of such person or the hearing officer and upon a showing of
171 good cause, the commissioner may grant one or more continuances.
172 The hearing shall be limited to a determination of the following issues:
173 (1) Did the police officer have probable cause to arrest the person for
174 operating a motor vehicle while under the influence of intoxicating
175 liquor or any drug or both; (2) was such person placed under arrest; (3)
176 did such person refuse to submit to such test or analysis or did such
177 person submit to such test or analysis, [commenced within two hours
178 of the time of operation,] and the results of such test or analysis
179 indicated that such person had an elevated blood alcohol content; and
180 (4) was such person operating the motor vehicle. In the hearing, the
181 results of the test or analysis shall be sufficient to indicate the ratio of
182 alcohol in the blood of such person at the time of operation, provided
183 such test was commenced within two hours of the time of operation.

184 The fees of any witness summoned to appear at the hearing shall be
185 the same as provided by the general statutes for witnesses in criminal
186 cases. Notwithstanding the provisions of subsection (a) of section 52-
187 143, any subpoena summoning a police officer as a witness shall be
188 served not less than seventy-two hours prior to the designated time of
189 the hearing.

190 (h) If, after such hearing, the commissioner finds on any one of the
191 said issues in the negative, the commissioner shall reinstate such
192 license or operating privilege. If, after such hearing, the commissioner
193 does not find on any one of the said issues in the negative or if such
194 person fails to appear at such hearing, the commissioner shall affirm
195 the suspension contained in the suspension notice for the appropriate
196 period specified in subsection (i) or (j) of this section. The
197 commissioner shall render a decision at the conclusion of such hearing
198 and send a notice of the decision by bulk certified mail to such person.
199 The notice of such decision sent by bulk certified mail to the address of
200 such person as shown by the records of the commissioner shall be
201 sufficient notice to such person that such person's operator's license or
202 nonresident operating privilege is reinstated or suspended, as the case
203 may be.

204 (i) Except as provided in subsection (j) of this section, the
205 commissioner shall suspend the operator's license or nonresident
206 operating privilege of a person who did not contact the department to
207 schedule a hearing, who failed to appear at a hearing or against whom,
208 after a hearing, the commissioner held pursuant to subsection (h) of
209 this section, as of the effective date contained in the suspension notice
210 or the date the commissioner renders a decision, whichever is later, for
211 a period of: (1) (A) Except as provided in subparagraph (B) of this
212 subdivision, ninety days, if such person submitted to a test or analysis
213 and the results of such test or analysis indicated that such person had
214 an elevated blood alcohol content, (B) one hundred twenty days, if
215 such person submitted to a test or analysis and the results of such test
216 or analysis indicated that the ratio of alcohol in the blood of such

217 person was sixteen-hundredths of one per cent or more of alcohol, by
218 weight, or (C) six months if such person refused to submit to such test
219 or analysis, (2) if such person has previously had such person's
220 operator's license or nonresident operating privilege suspended under
221 this section, (A) except as provided in subparagraph (B) of this
222 subdivision, nine months if such person submitted to a test or analysis
223 and the results of such test or analysis indicated that such person had
224 an elevated blood alcohol content, (B) ten months if such person
225 submitted to a test or analysis and the results of such test or analysis
226 indicated that the ratio of alcohol in the blood of such person was
227 sixteen-hundredths of one per cent or more of alcohol, by weight, and
228 (C) one year if such person refused to submit to such test or analysis,
229 and (3) if such person has two or more times previously had such
230 person's operator's license or nonresident operating privilege
231 suspended under this section, (A) except as provided in subparagraph
232 (B) of this subdivision, two years if such person submitted to a test or
233 analysis and the results of such test or analysis indicated that such
234 person had an elevated blood alcohol content, (B) two and one-half
235 years if such person submitted to a test or analysis and the results of
236 such test or analysis indicated that the ratio of alcohol in the blood of
237 such person was sixteen-hundredths of one per cent or more of
238 alcohol, by weight, and (C) three years if such person refused to
239 submit to such test or analysis.

240 (j) The commissioner shall suspend the operator's license or
241 nonresident operating privilege of a person under twenty-one years of
242 age who did not contact the department to schedule a hearing, who
243 failed to appear at a hearing or against whom, after a hearing the
244 commissioner held pursuant to subsection (h) of this section, as of the
245 effective date contained in the suspension notice or the date the
246 commissioner renders a decision whichever is later, for twice the
247 appropriate period of time specified in subsection (i) of this section,
248 except that, in the case of a person who is sixteen or seventeen years of
249 age at the time of the alleged offense, the period of suspension for a
250 first offense shall be one year if such person submitted to a test or

251 analysis and the results of such test or analysis indicated that such
252 person had an elevated blood alcohol content or eighteen months if
253 such person refused to submit to such test or analysis.

254 (k) Notwithstanding the provisions of subsections (b) to (j),
255 inclusive, of this section, any police officer who obtains the results of a
256 chemical analysis of a blood sample taken from an operator of a motor
257 vehicle involved in an accident who suffered or allegedly suffered
258 physical injury in such accident, or is otherwise deemed by a police
259 officer to require treatment or observation at a hospital, shall notify the
260 Commissioner of Motor Vehicles and submit to the commissioner a
261 written report if such results indicate that such person had an elevated
262 blood alcohol content, and if such person was arrested for violation of
263 section 14-227a, as amended by this act, in connection with such
264 accident. The report shall be made on a form approved by the
265 commissioner containing such information as the commissioner
266 prescribes, and shall be subscribed and sworn to under penalty of false
267 statement, as provided in section 53a-157b, by the police officer. The
268 commissioner may, after notice and an opportunity for hearing, which
269 shall be conducted by a hearing officer on behalf of the commissioner
270 in accordance with chapter 54, suspend the motor vehicle operator's
271 license or nonresident operating privilege of such person for the
272 appropriate period of time specified in subsection (i) or (j) of this
273 section. Each hearing conducted under this subsection shall be limited
274 to a determination of the following issues: (1) Whether the police
275 officer had probable cause to arrest the person for operating a motor
276 vehicle while under the influence of intoxicating liquor or drug or
277 both; (2) whether such person was placed under arrest; (3) whether
278 such person was operating the motor vehicle; (4) whether the results of
279 the analysis of the blood of such person indicate that such person had
280 an elevated blood alcohol content; and (5) whether the blood sample
281 was obtained in accordance with conditions for admissibility and
282 competence as evidence as set forth in subsection (k) of section 14-
283 227a. If, after such hearing, the commissioner finds on any one of the
284 said issues in the negative, the commissioner shall not impose a

285 suspension. The fees of any witness summoned to appear at the
286 hearing shall be the same as provided by the general statutes for
287 witnesses in criminal cases, as provided in section 52-260.

288 (l) The provisions of this section shall apply with the same effect to
289 the refusal by any person to submit to an additional chemical test as
290 provided in subdivision (5) of subsection (b) of section 14-227a, as
291 amended by this act.

292 (m) The provisions of this section shall not apply to any person
293 whose physical condition is such that, according to competent medical
294 advice, such test would be inadvisable.

295 (n) The state shall pay the reasonable charges of any physician who,
296 at the request of a municipal police department, takes a blood sample
297 for purposes of a test under the provisions of this section.

298 (o) For the purposes of this section, "elevated blood alcohol content"
299 means (1) a ratio of alcohol in the blood of such person that is eight-
300 hundredths of one per cent or more of alcohol, by weight, (2) if such
301 person is operating a commercial motor vehicle, a ratio of alcohol in
302 the blood of such person that is four-hundredths of one per cent or
303 more of alcohol, by weight, or (3) if such person is less than twenty-one
304 years of age, a ratio of alcohol in the blood of such person that is two-
305 hundredths of one per cent or more of alcohol, by weight.

306 (p) The Commissioner of Motor Vehicles shall adopt regulations, in
307 accordance with chapter 54, to implement the provisions of this
308 section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	14-227a(b)
Sec. 2	<i>October 1, 2010</i>	14-227b

Statement of Purpose:

To remove the requirement that a test for blood alcohol levels be performed within two hours of operation for purposes of administrative per se hearings and to require that any test not commenced within two hours be established as reliable by expert witness testimony for purpose of criminal prosecution.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]